

Remarks

The indication that claims 4-8 and 10-13 include patentable subject matter is acknowledged with thanks. In reliance thereon, claims 10, 12, and 13 have been amended into independent form.

Claim 1 was rejected as anticipated by FANT et al. 2004/0076151. This claim has been canceled and withdrawal of the rejection is respectfully requested.

Claims 2 and 14 were rejected as unpatentable over FANT et al. in view of SUEMURA 2003/0084367 and claim 3 was rejected as unpatentable further in view of NOMURA et al. 7,133,402. Reconsideration and withdrawal of the rejections are respectfully requested because SUEMURA is not prior art by operation of §103(c).

SUEMURA is available as reference by operation of §102(e). MPEP §706.02 states that effective November 29, 1999, subject matter that was prior art under 35 USC §103 via 35 USC §102(e) is disqualified as prior art against the claimed invention if the subject matter in the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

MPEP §706.02 states that "commonly owned" means wholly owned by the same person or organization at the time the claimed invention was made. The present application is under assignment to NEC Corporation of Tokyo, Japan. SUEMURA lists NEC

Corporation of Tokyo, Japan as the assignee. Applicants assert that at the time the invention was made, SUEMURA and the present invention were commonly owned by NEC Corporation.

Accordingly, applicants believe that 35 USC §103(c) applies to the rejections of each of claims 2-3 and 14 and that these rejections should be withdrawn.

Claim 9 was rejected as unpatentable over FANT et al. in view of NOMURA et al. This claim has been canceled and withdrawal of the rejection is respectfully requested.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

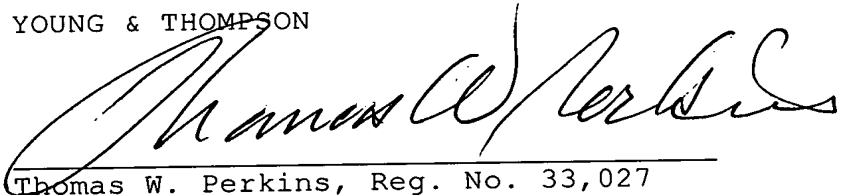
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fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A handwritten signature in black ink, appearing to read "Thomas W. Perkins", is written over a horizontal line.

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